

MF 01-16

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN DOE

Taxpayer

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Docket No. 01-ST-0000

Acct # 00-00000

NTL # 00-000000

RECOMMENDATION FOR DISPOSITION

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, *pro se*.

Synopsis:

The Department of Revenue ("Department") issued a Notice of Penalty for Motor Fuel Tax ("Notice") to JOHN DOE ("taxpayer"). The Notice, which assessed a \$2,500 penalty, alleged that the taxpayer operated a licensed motor vehicle with dyed diesel fuel in its tank. The taxpayer timely protested the Notice. The parties filed a joint stipulation of facts along with supporting statements of their positions and requested that this case be decided based on the written submissions. After reviewing the documents presented, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On July 25, 2000, the taxpayer was driving a Ford F-250 pickup truck, which was licensed in Illinois, and the taxpayer was stopped at a roadblock. (Stipulation #1, 2)
2. The truck's front and rear fuel tanks contained some red dyed diesel fuel. (Stipulation #3)
3. On December 8, 2000, the Department issued to the taxpayer a Notice of Penalty for Motor Fuel Tax showing a penalty due of \$2,500 for operating a licensed motor vehicle with dyed diesel fuel in its tank. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Paragraph 15 of section 15 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which became effective January 1, 2000, provides in part as follows:

“15. If a licensed motor vehicle is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle, the operator shall pay the following penalty:

First occurrence.....	\$2,500
Second and each occurrence thereafter.....	\$5,000

(35 ILCS 505/15). The taxpayer contends that at the time that his truck was stopped, he was not aware that the dyed fuel was in the tank. He states that the testing agent said that there was only a very small amount of dyed fuel in his tank. Upon further investigation, the taxpayer discovered that a “hay hand” who was helping his son had run out of fuel while in the field and had used fuel from a can to add to the tank. The taxpayer claims that his truck was filled 4 or 5 times with undyed fuel since that incident. The taxpayer argues that the \$2,500 penalty should not be imposed because there was only a very small amount of dyed fuel in the tank, and it was put there without his knowledge.

The Department contends that section 15 of the Act does not allow for an abatement of the penalty. The Department argues that the statute simply imposes a penalty if a licensed motor vehicle is found to have dyed diesel fuel in its tank, and there is no exception to the penalty for good faith or reasonable cause.

Unfortunately for the taxpayer, as the Department has stated, the Act provides that the operator of a licensed motor vehicle with dyed fuel in its tank shall pay a penalty. Nothing in the statute allows for the abatement of the penalty if the taxpayer shows reasonable cause for the violation in question. The taxpayer has admitted that at least a small portion of the fuel in his tank was dyed. This requires the imposition of the penalty under section 15 of the Act. Although the taxpayer may have been unaware that the dyed fuel was in the tank and the amount of dyed fuel may have been very small, the fact remains that the dyed fuel was there on the day in question. It must therefore be recommended that the Notice of Penalty for Motor Fuel Tax be affirmed in its entirety.

Linda Olivero
Administrative Law Judge

Enter: July 19, 2001